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Quinnipiac College and Security Department Membership. Case 34-CA-8988

January 7, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on August 24, 1999, the General Counsel of the National Labor Relations Board issued a complaint on September 9, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and furnish information following the Union's certification in Case 34-RC-1717. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 30, 1999, the General Counsel filed a Motion for Summary Judgment. On October 5, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its contention that the Board erred in the representation proceeding in finding that the shift supervisors are not supervisors within the meaning of the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We

¹ The Respondent contends that exceptional circumstances require reopening the record and reconsidering the finding that the "shift supervisors" are not supervisors within the meaning of Sec. 2(11) of the Act, in light of the Respondent's security department policies and procedures manual. In particular, the Respondent argues that because the manual was not formally admitted into the record, the parties had no reason to believe that the Regional Director would rely on it in his Decision and Direction of Election. (The Respondent notes that it had successfully opposed the Petitioner's motion to have the complete manual admitted into the record prior to the Regional Director's decision.) We find no merit to the Respondent's "exceptional circumstances" contention. In its Request for Review of the Regional Director's Decision and Direction of Election, the Respondent did not argue

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

We also find that there are no factual issues warranting a hearing with respect to the Union's requests to bargain and for information. The Respondent's answer admits that by letter dated July 26, 1999, the Union requested that the Respondent bargain and furnish it with the following information:

1. Please provide a list of all bargaining unit employees with the following information:

Name
Address
Telephone
Date of Birth
Date of Hire
Job title and/or classification
Rate of Pay
Sex
Marital status
Social Security number

2. Please provide a list of job titles and job classifications and the number of employees in each job title or classification.
3. Please provide a list of employees, by job classification or job title, on each shift.
4. Please provide the following information with respect to employee benefits in which bargaining unit employees participate or are eligible to participate:
 - a. Exact type and title of each and every medical, health, disability, life, dental, vision and prescription benefit plan;
 - b. Copies of all summary plan descriptions for each and every employee benefit plan;
 - c. Copies of each plan document or insurance policy for each and every employee benefit plan;
 - d. Breakdown of how each employee is classified for the purpose of employee benefit coverage, i.e., single, couple, family, etc.;

that the Regional Director should not have referred to the manual at all, nor did the Respondent seek to have the record reopened to receive it in evidence. Because the Respondent had the opportunity then to seek to have the manual admitted and failed to do so, it foreclosed from making that contention at this stage of the proceeding. See Sec. 102.67(j) of the Board's Rules.

² Member Hurtgen dissented from his colleagues in the underlying representation proceeding with respect to the supervisory status of the Employer's shift supervisors, assistant shift supervisors, and acting shift supervisors. However, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass v. NLRB*, supra. In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

5. Please provide the following information with respect to employee pension and retirement benefits and plans in which bargaining unit employees currently participate or are eligible to participate:

- a. Copies of all summary plan descriptions for any pension or retirement plan;
- b. Copy of the pension or retirement plan document including all amendments and changes;
- c. Form 5500 and Schedule B for the last two years;
- d. Latest Actuarial Valuation, including documentation upon which the actuarial valuation was based;
- e. Trustees statement for the last three plan years.

6. Please provide a list of employees on seasonal lay-off.

7. Please provide a list of any bargaining unit employees on leave of absence, Family Medical leave, disability leave or Worker's Compensation.

8. Please identify and provide a copy of all college policies, procedures, handbooks, memoranda and guidelines that affect or relate to the terms and conditions of employment for bargaining union employees.

9. Please provide a copy of all summary plan changes of departmental structure or operation.

The Respondent denies that the information requested is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the unit employees. It is well established, however, that with the exception of the employees' social security numbers, which the General Counsel specifically excepts from the complaint,³ the requested information is presumptively relevant for the purposes of collective bargaining and must be furnished on request. See *Trustees of Masonic Hall*, 261 NLRB 436 (1982), and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary judgment and will order the Respondent to bargain and to furnish the requested information with the exception of employee social security numbers.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Hamden, Connecticut, has been engaged as a nonprofit private univer-

sity. During the 12-month period ending August 31, 1999, the Respondent, in conducting its operations described above, derived gross revenues, excluding contributions which because of limitations by the grantor are not available for operating expenses, in excess of 1 million dollars and purchased and received at its facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 4, 1999, the Union was certified on June 25, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time security department employees, including dispatchers, traffic control officers, assistant supervisors, acting shift supervisors, and shift supervisors employed by Respondent at its Hamden, Connecticut facilities; but excluding all other employees, and professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since July 26, 1999, the Union, by letter, has requested the Respondent to bargain and to furnish information. Since July 26, 1999, the Respondent has refused to furnish information, and since August 11, 1999, the Respondent has refused to bargain. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 26, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and

³ See *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

⁴ The Respondent's answer denied the Union's status as a labor organization. In the underlying representation case, the Regional Director found that the petitioner is a labor organization and the Respondent did not request review of that finding. Consequently, the Respondent is precluded from litigating the issue in this proceeding. See Sec. 102.67(j) of the Board's Rules.

desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested with the exception of employees' social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Quinnipiac College, Hamden, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Security Department Membership, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time security department employees, including dispatchers, traffic control officers, assistant supervisors, acting shift supervisors, and shift supervisors employed by Respondent at its Hamden, Connecticut facilities; but excluding all other employees, and professional employees and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on July 26, 1999, with the exception of employees' social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Hamden, Connecticut, copies of the attached notice marked "Appendix."⁵ Copies of the notice,

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 7, 2000

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Security Department Membership as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time security department employees, including dispatchers, traffic control officers, assistant supervisors, acting shift supervisors, and shift supervisors employed by us at our Hamden, Connecticut facilities; but excluding all other employees,

and professional employees and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on July 26, 1999, with the exception of employees' social security numbers.

QUINNIPIAC COLLEGE